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9 UNITED STATES OF AMERICA

10 UNITED STATES DISTRICT COURT

11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,
13 Plaintiff,
14 v.

15 BRIAN NICHOLAS SIMONE and
SONIA ARAYA,
16 Defendants.
17
18
19

No. CR 17-00307-MWF-1

PROTECTIVE ORDER REGARDING
DISCOVERY CONTAINING PERSONAL
IDENTIFYING INFORMATION

20 The Court has read and considered the Stipulation and Joint
21 Request for a Protective Order Regarding Discovery Containing
22 Personal Identifying Information, filed by the government and
23 defendant BRIAN NICHOLAS SIMONE ("defendant") in this matter on July
24 19, 2017, which this Court incorporates by reference into this
25 order, and FOR GOOD CAUSE SHOWN the Court hereby FINDS AND ORDERS as
26 follows:

27 1. The government's discovery in this case relates to
28 defendant's alleged crimes, that is, 18 U.S.C. § 1708 (Theft of

1 Mail, counts one through three), 18 U.S.C. §§ 1074, 2(a) (Possession
2 of a Counterfeit United States Postal Key by Aiding and Abetting,
3 count four), 18 U.S.C. §§ 1029(a)(3), 2(a) (Possession of 15 or More
4 Unauthorized Access Devices by Aiding and Abetting, count five),
5 18 U.S.C. §§ 1029(a)(4), 2(a) (Possession of Device-Making Equipment
6 by Aiding and Abetting, count six),
7 18 U.S.C. §§ 1028(a)(3), 2(a) (Fraud in Connection With
8 Identification Documents by Aiding and Abetting, count seven),
9 18 U.S.C. §§ 1708, 2(a) (Possession of Stolen Mail by Aiding and
10 Abetting, count eight), 18 U.S.C. §§ 1028A(a)(1), 2(a) (Aggravated
11 Identity Theft by Aiding and Abetting, counts nine and ten). The
12 discovery contains the personal identifying information of real
13 persons, including, among other things, personal names, addresses,
14 Social Security numbers, and bank account numbers.

15 2. If the government were to redact all personal identifying
16 information in strict compliance with Federal Rule of Criminal
17 Procedure 49.1, the Central District of California's Local Rules
18 regarding redaction, and the Privacy Policy of the United States
19 Judicial Conference, the defense would receive a set of discovery
20 that would be highly confusing and difficult to understand, and
21 defense counsel would not be able to adequately evaluate the case,
22 advise her client, or prepare for trial.

23 3. The Court finds it is appropriate, therefore, for the
24 government to produce unredacted discovery that contains personal
25 identifying information, but preserves the privacy and security of
26 the victims and third parties. The Court agrees that a protective
27 order as requested by the parties will serve the government's
28 interest in maintaining the privacy and security of victims and

1 third parties while permitting the defense to understand the
2 government's evidence.

3 4. Accordingly, the discovery that the government will
4 provide to defense counsel in the above-captioned case will be
5 subject to this Protective Order, as follows:

6 a. For purposes of the Protective Order, the term
7 "Personal Identifying Information" ("PII") includes any information
8 that can be used to identify a person, including name, address, date
9 of birth, Social Security number, driver's license number, telephone
10 number, account number, or personal identification number. The term
11 "Protected Information" refers to materials containing PII that the
12 government produces to the defense pursuant to the Protective Order.

13 b. For purposes of the Protective Order, the term
14 "defense team" refers to (1) defendant's counsel of record,
15 (2) other attorneys at defense counsel's law firm who may be
16 consulted regarding case strategy in the above-captioned matter,
17 (3) defense investigators who are assisting defense counsel with
18 this case, (4) retained experts or potential experts, and
19 (5) paralegals, legal assistants, and other support staff to
20 defendant's counsel of record providing assistance on this case --
21 all of whom have been advised of their obligations under the
22 Protective Order and have affirmed to defendant's counsel of record
23 that they agree to be bound by the terms of the Protective Order.
24 The term "defense team" does not include defendant, his family
25 members, or any other associates of defendant.

26 c. Defendant's counsel of record agrees to advise all
27 members of the defense team of their obligations under the
28 Protective Order and ensure their agreement to follow the

1 Protective Order, prior to providing members of the defense team
2 with access to any materials subject to the Protective Order.

3 d. The government is authorized to provide defendant's
4 counsel of record with Protected Information marked with the
5 following legend: "CONTENTS SUBJECT TO PROTECTIVE ORDER." If
6 defendant objects to any such designation, he may do so by
7 application to the Court upon duly noticed motion, following meeting
8 and conferring with the government regarding the objection.

9 e. Defendant may review Protected Information in this
10 case only in the presence of a member of the defense team, and his
11 counsel of record shall ensure that defendant is never left alone
12 with any discovery subject to the Protective Order. Defendant may
13 see and review Protected Information in the presence of a member of
14 the defense team, but defendant may not copy, keep, maintain, or
15 otherwise possess any of such Protected Information in this case at
16 any time. Defendant must return any Protected Information to the
17 defense team at the conclusion of any meeting at which defendant is
18 permitted to view the Protected Information. Defendant may not take
19 any Protected Information out of the room in which he is meeting
20 with the defense team. Defendant may not write down or memorialize
21 any PII contained in the Protected Information. At the conclusion
22 of any meeting with defendant, the member of the defense team
23 present shall take with him or her all Protected Information. At no
24 time, under no circumstance, will any Protected Information be left
25 in the possession, custody, or control of defendant, whether he is
26 incarcerated or not.

1 f. The defense team shall not permit anyone other than
2 the defense team to have possession of Protected Information,
3 including defendant himself.

4 g. The defense team shall access and use Protected
5 Information for the sole purpose of preparing for trial or any
6 related proceedings in this case. The defense team may review
7 Protected Information with a witness or potential witness in this
8 case, including defendant. Before being shown any portion of
9 Protected Information, however, any witness or potential witness
10 must be informed of, and agree in writing to be bound by, the
11 requirements of the Protective Order. No witness or potential
12 witness may retain Protected Information, or any copy thereof, after
13 his or her review of those materials with the defense team is
14 complete.

15 h. The defense team shall maintain Protected Information
16 safely and securely, and shall exercise reasonable care in ensuring
17 the confidentiality of those materials by (1) not permitting anyone
18 other than defense team members and defendant as restricted above to
19 see Protected Information, (2) not divulging to anyone the contents
20 of Protected Information, and (3) not permitting Protected
21 Information to be outside the defense team's offices, homes,
22 vehicles, or personal presence.

23 i. To the extent that notes are made that memorialize,
24 in whole or in part, the PII in any Protected Information, or to the
25 extent that copies are made for authorized use by members of the
26 defense team, such notes, copies, or reproductions become Protected
27 Information subject to the Protective Order and must be handled in
28 accordance with the terms of the Protective Order.

1 j. The defense team shall use Protected Information and
2 materials otherwise identified as containing PII only for the
3 litigation of this matter and for no other purpose. Litigation of
4 this matter includes any appeal filed by defendant and any motion
5 filed by defendant pursuant to 28 U.S.C. § 2255. In the event that
6 a party needs to file Protected Information or materials otherwise
7 identified as containing PII with the Court or divulge the contents
8 of such materials in court filings, the filing should be made under
9 seal. If the Court rejects the request to file such information
10 under seal, the party seeking to file such information shall provide
11 advance written notice to the other party to afford such party an
12 opportunity to object or otherwise respond to such intention. If
13 the other party does not object to the proposed filing, the party
14 seeking to file such information shall redact the PII and make all
15 reasonable attempts to limit the divulging of PII.

16 k. The parties also agree that any PII produced in the
17 course of discovery in the above-captioned matter prior to the date
18 of the Protective Order shall be subject to the terms of the
19 Protective Order.

20 l. Upon the final disposition of this case, any
21 Protected Information and materials otherwise identified as
22 containing PII shall not be used, in any way, in any other matter,
23 absent a court order. All materials designated subject to the
24 Protective Order maintained in the defense team's files shall remain
25 subject to the Protective Order unless and until such order is
26 modified by court order. Within thirty days of the conclusion of
27 appellate and post-conviction proceedings, the defense team shall
28 return Protected Information and materials otherwise identified as

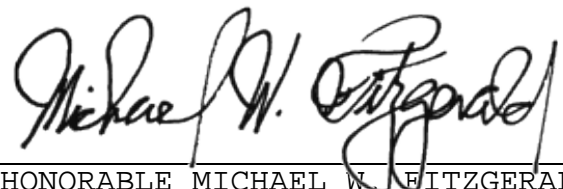
1 containing PII to the government, certify that such materials have
2 been destroyed, or certify that such materials are being kept
3 pursuant to the Business and Professions Code and the Rules of
4 Professional Conduct.

5 m. In the event that there is a substitution of counsel
6 prior to when such documents must be returned, new defense counsel
7 must join this Protective Order before any Protected Information or
8 materials otherwise identified as containing PII may be transferred
9 from the undersigned defense counsel to the new defense counsel, who
10 then will become the defense team's custodian of materials
11 designated subject to the Protective Order and who shall then become
12 responsible, upon the conclusion of appellate and post-conviction
13 proceedings, for returning to the government, certifying the
14 destruction of, or retaining pursuant to the Business and
15 Professions Code and the Rules of Professional Conduct all Protected
16 Information and materials otherwise identified as containing PII.

17
18 IT IS SO ORDERED.

19
20 July 20, 2017

21 DATE



22 HONORABLE MICHAEL W. FITZGERALD
23 UNITED STATES DISTRICT JUDGE

24 Presented by:

25 /s/

26 SHAWN T. ANDREWS
27 Assistant United States Attorney
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